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IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA  
(Modesto Division)

11 In re: ) Case No: 10-94467  
12 Tina M. Brown, ) Chapter 7 Case  
13 P.O. Box 3931 ) DC No. CWC-2  
14 Sonora, CA 95370 )  
15 S.S. xxx-xx-6906 ) Date: February 22, 2012  
16 ) Time: 10:30 a.m.  
Debtor. ) Place: Modesto Courtroom  
Department D

17 **MOTION TO COMPEL TURNOVER OF PROPERTY OF THE ESTATE**

18 To: The Honorable Ronald H. Sargis, U.S. Bankruptcy Judge:

19 The Chapter 7 Trustee, Michael D. McGranahan, respectfully  
20 moves the Court pursuant to 11 U.S.C. § 542 for an order  
21 requiring the Debtor to turn over property of the estate and in  
22 support of this motion, respectfully represents:

23 1. This Court has jurisdiction of this matter under 28  
24 U.S.C. Sections 1334 and 157(a).

25 2. On November 12, 2010, the Debtor filed a voluntary  
26 petition under Chapter 7 of the Bankruptcy Code, in the above-  
27 entitled Court. Michael D. McGranahan is the duly appointed  
28 Trustee in the case.

1       3. On or about September 19, 2011, the Trustee discovered  
2 that the Debtor and her ex-spouse had obtained an Order entered  
3 on August 29, 2011 in Tuolumne County Superior Court, Case No.  
4 FL9718 which dissolved the marriage and divided the marital  
5 community property of the parties. This state court Order was  
6 entered without the knowledge of the Trustee and without prior  
7 approval of the Bankruptcy Court. The Trustee notified counsel  
8 for the parties that such community property was property of the  
9 bankruptcy estate and that the Order was in violation of 11  
10 U.S.C. § 362(a) and void as a matter of law. Subsequently, the  
11 parties stipulated to amending the state court Order in setting  
12 aside the division of marital property but retaining the  
13 dissolution of marriage. Such Stipulation and Order was entered  
14 on November 17, 2011 in the state court case.

15       4. The Trustee is informed and believes and therefore  
16 alleges that among the assets which constitute property of the  
17 bankruptcy estate is the following community property now in  
18 possession of the Debtor as identified in the state court Order:

- 19       a. Real property located in San Felipe, Mexico;  
20       b. \$22,205.58 in cash awarded to the Debtor in the state  
21 court Order and held in the attorney/client trust account of the  
22 ex-spouse's counsel; and  
23       c. 2006 Harley Davidson Screaming Eagle motorcycle.

24       5. The Trustee through his counsel has made written demand  
25 upon the Debtor on September 19, 2011 and November 9, 2011 for  
26 turnover of the above-described assets as property of the  
27 bankruptcy estate.

28       6. In response to the Trustee's written demands, the Debtor

1 has indicated that the \$22,205.58 in cash has either been spent  
2 by the Debtor on post-petition living expenses and/or is subject  
3 to a claimed exemption. The Debtor's Bankruptcy Schedule B,  
4 Paragraph 35, separately identifies and discloses the \$22,205.58.  
5 However, the Debtor's Bankruptcy Schedule C does not claim these  
6 funds as exempt property. The Debtor has also indicated an  
7 interest in purchasing the 2006 Harley Davidson Screaming Eagle  
8 motorcycle from the bankruptcy estate. While the Debtor has  
9 listed this vehicle in her Schedule B, Paragraph 25 with a value  
10 of \$18,775, the vehicle has not been turned over to the Trustee  
11 so that it's current fair market value can be determined. The  
12 Debtor's Bankruptcy Schedule A lists the real property located in  
13 San Felipe, Mexico with a value of \$45,000. However, the Debtor  
14 has not responded to the Trustee's request for all documentation  
15 establishing title, location, property taxation and outstanding  
16 indebtedness regarding such property.

17 7. The Debtor has failed and/or refused to reply to the  
18 Trustee's demands for turnover of these assets.

19 8. The Trustee believes that the loss to the bankruptcy  
20 estate incurred as a result of the Debtor's failure to turnover  
21 the above-described assets is \$85,980.58.

22 WHEREFORE, the Trustee prays that the Court enter an order:

23 1. That within five (5) calendar days of entry of this  
24 Court's Order, the Debtor surrender and deliver possession to the  
25 Trustee the following property:

26 a. all documentation establishing title, location, property  
27 taxation and outstanding indebtedness regarding the real property  
28 located in San Felipe, Mexico;

1       b. \$22,205.58 in cash awarded to the Debtor in the state  
2 court Order; and

3       c. the 2006 Harley Davidson Screaming Eagle motorcycle,  
4 including all documentation establishing title and outstanding  
5 indebtedness regarding the vehicle.

6 The pending matter qualifies as a contested matter under Federal  
7 Rule of Bankruptcy Procedure ("FRBP") 9014. FRBP 9014(c)  
8 provides that a bankruptcy court may direct that one or more  
9 rules in the FRBP 7000 series shall apply in a contested matter.  
10 Accordingly, the Trustee requests that this court direct that  
11 FRBP 7070 applies in this contested matter;


12       2. That in the event that such property of the estate is  
13 not timely surrendered, judgment be entered in favor of the  
14 Trustee and against the Debtor in the sum of \$85,980.58 together  
15 with costs incurred herein; and

16       3. For such other further relief as the court deems just  
17 and proper.

18 Dated: 1-4-12

Respectfully Submitted,

Law Office of Carl W. Collins

  
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Carl W. Collins, Esq.  
Attorney for Trustee